

Tanya E. Moore, SBN 206683
MOORE LAW FIRM, P.C.
300 South First Street, Ste. 342
San Jose, California 95113
Telephone (408) 298-2000
Facsimile (408) 298-6046
E-mail: service@moorelawfirm.com
tanya@moorelawfirm.com

Attorney for Plaintiff
Cameron Shaw

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CAMERON SHAW,

Plaintiff,

vs.

ZAPA ENERGY, INC. dba VALERO GAS
STATION; MEHDI MOHAMMADIAN,
Trustee of the MOHAMMADIAN LIVING
TRUST dated July 31, 1991 as amended and
restated on April 7, 2017; FERESHTEH
MOHAMMADIAN, Trustee of the
MOHAMMADIAN LIVING TRUST dated
July 31, 1991 as amended and restated on
April 7, 2017,

Defendants.

No.

**COMPLAINT ASSERTING DENIAL OF
RIGHT OF ACCESS UNDER THE
AMERICANS WITH DISABILITIES ACT
FOR INJUNCTIVE RELIEF, DAMAGES,
ATTORNEYS' FEES AND COSTS (ADA)**

I. SUMMARY

1. This is a civil rights action by plaintiff CAMERON SHAW ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Valero Gas Station
15595 Washington Ave.
San Lorenzo, California 94580
(hereafter "the Facility")

1 applicable state and federal laws.

2 10. Plaintiff lives approximately forty miles from the Facility and visited the
3 Facility on or about November 29, 2019 to purchase fuel and snacks and use the Bitcoin
4 machine. During his visit to the Facility, Plaintiff encountered the following barriers (both
5 physical and intangible) that interfered with, if not outright denied, Plaintiff's ability to use and
6 enjoy the goods, services, privileges and accommodations offered at the Facility:

7 a) Plaintiff could not locate any accessible parking in the Facility's parking
8 lot and had to remain in his vehicle parked at the fuel pump while his
9 fiancée got out to purchase fuel and refreshments. He could not unload
10 from his vehicle at the fuel pump due to the lack of clear space.

11 b) Plaintiff was unable to enter the store since there was a step at the door
12 which he could not wheel over. As a result, he could not access the
13 Bitcoin machine.

14 11. The barriers identified in paragraph 10 herein are only those that Plaintiff
15 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist
16 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once
17 such additional barriers are identified as it is Plaintiff's intention to have all barriers which
18 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

19 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
20 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
21 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
22 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
23 once the barriers are removed.

24 13. Defendants knew, or should have known, that these elements and areas of the
25 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
26 the physically disabled. Moreover, Defendants have the financial resources to remove these
27 barriers from the Facility (without much difficulty or expense), and make the Facility
28 accessible to the physically disabled. To date, however, Defendants refuse to either remove

1 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

2 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
3 and authority to modify the Facility to remove impediments to wheelchair access and to
4 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
5 Accessible Design. Defendants have not removed such impediments and have not modified the
6 Facility to conform to accessibility standards. Defendants have intentionally maintained the
7 Facility in its current condition and have intentionally refrained from altering the Facility so
8 that it complies with the accessibility standards.

9 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
10 so obvious as to establish Defendants' discriminatory intent. On information and belief,
11 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
12 to relevant building standards; disregard for the building plans and permits issued for the
13 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
14 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
15 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
16 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
17 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

18 VI. FIRST CLAIM

19 Americans with Disabilities Act of 1990

20 Denial of "Full and Equal" Enjoyment and Use

21 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
22 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

23 17. Title III of the ADA holds as a "general rule" that no individual shall be
24 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
25 goods, services, facilities, privileges, and accommodations offered by any person who owns,
26 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

27 //

28 //

1 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal
2 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the
3 Facility during each visit and each incident of deterrence.

4 Failure to Remove Architectural Barriers in an Existing Facility

5 19. The ADA specifically prohibits failing to remove architectural barriers, which
6 are structural in nature, in existing facilities where such removal is readily achievable. 42
7 U.S.C. § 12182(b)(2)(A)(iv).

8 20. When an entity can demonstrate that removal of a barrier is not readily
9 achievable, a failure to make goods, services, facilities, or accommodations available through
10 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*
11 § 12182(b)(2)(A)(v).

12 21. Here, Plaintiff alleges that Defendants can easily remove the architectural
13 barriers at the Facility without much difficulty or expense, and that Defendants violated the
14 ADA by failing to remove those barriers, when it was readily achievable to do so.

15 22. In the alternative, if it was not “readily achievable” for Defendants to remove
16 the Facility’s barriers, then Defendants violated the ADA by failing to make the required
17 services available through alternative methods, which are readily achievable.

18 Failure to Design and Construct an Accessible Facility

19 23. Plaintiff alleges on information and belief that the Facility was designed and
20 constructed (or both) after January 26, 1993 – independently triggering access requirements
21 under Title III of the ADA.

22 24. The ADA also prohibits designing and constructing facilities for first occupancy
23 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with
24 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25 25. Here, Defendants violated the ADA by designing and constructing (or both) the
26 Facility in a manner that was not readily accessible to the physically disabled public –
27
28

1 including Plaintiff – when it was structurally practical to do so.¹

2 Failure to Make an Altered Facility Accessible

3 26. Plaintiff alleges on information and belief that the Facility was modified after
4 January 26, 1993, independently triggering access requirements under the ADA.

5 27. The ADA also requires that facilities altered in a manner that affects (or could
6 affect) its usability must be made readily accessible to individuals with disabilities to the
7 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
8 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
9 fountains serving that area accessible to the maximum extent feasible. Id.

10 28. Here, Defendants altered the Facility in a manner that violated the ADA and
11 was not readily accessible to the physically disabled public – including Plaintiff – to the
12 maximum extent feasible.

13 Failure to Modify Existing Policies and Procedures

14 29. The ADA also requires reasonable modifications in policies, practices, or
15 procedures, when necessary to afford such goods, services, facilities, or accommodations to
16 individuals with disabilities, unless the entity can demonstrate that making such modifications
17 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

18 30. Here, Defendants violated the ADA by failing to make reasonable modifications
19 in policies, practices, or procedures at the Facility, when these modifications were necessary to
20 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
21 accommodations.

22 Failure to Maintain Accessible Features

23 31. Defendants additionally violated the ADA by failing to maintain in operable
24 working condition those features of the Facility that are required to be readily accessible to and
25 usable by persons with disabilities.

26
27
28

¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Attorneys' fees, litigation expenses, and costs of suit.²
4. Interest at the legal rate from the date of the filing of this action.

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

1 5. For such other and further relief as the Court deems proper.

2
3 Dated: 02/05/2020

MOORE LAW FIRM, P.C.

4 /s/ Tanya E. Moore

5 Tanya E. Moore

6 Attorney for Plaintiff

7 Cameron Shaw

VERIFICATION

I, CAMERON SHAW, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 02/05/2020

/s/ Cameron Shaw
Cameron Shaw

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

Tanya E. Moore
Tanya E. Moore
Attorney for Plaintiff,
CAMERON SHAW